

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

DIONDRAE WILLIAMS, ET AL,

Plaintiffs,

v.

ROONEY TRUCKING, INC., ET AL,

Defendants.

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CIVIL ACTION NO. 5:17-CV-00089-RWS

CONSOLIDATED CASE

ORDER

Before the Court is the Report and Recommendation of the Special Master, filed on April 2, 2018. Docket No. 131. Also before the Court are other filings related to the Special Master's Report and Recommendation, including the following:

- Objection to Report and Recommendation of Special Master (Docket No. 144), filed on April 23, 2017 by Lori Brinkley and Reginald Brinkley, Sr. on behalf of claimant R.B.;
- Objection to Report and Recommendation of Special Master (Docket No. 146), filed on April 23, 2017 by Tonya Turner on behalf of claimant D.T.;
- Various notices of acceptance of the Special Master's recommendations (Docket Nos. 133-143, 147, 149 and 150); and
- Agreed Motion to Disburse Funds (Docket No. 160), filed on August 20, 2018 by Dane Ryan Stanage and Acuity, a Mutual Insurance Company and Rooney Trucking, Inc.

Also pending before the Court is Plaintiffs' Objection to Report and Recommendation of the Special Master (Docket No. 155), filed on July 6, 2018 by Plaintiffs Diondre Williams, Xzavion Neal, Ashton Brown, Kyron Saunders, Tyson Harper, Celeste Brown, Ian Williams and Craig Jackson on behalf of various minor claimants.

Finally, also before the Court is the Special Master's Motion for Fees (Docket No. 152), filed on May 7, 2018. The Court issues the following Order addressing each of the pending motions and objections.

I. BACKGROUND

This matter arose on March 23, 2017 when a school bus carrying students from Mount Pleasant Independent School District was struck head-on by a tractor-trailer rig owned and operated by Rooney Trucking, Inc. The collision resulted in two deaths, including that of Angelica Beard, an assistant track coach at Mount Pleasant High School, as well as the driver of the Rooney vehicle.

A lawsuit filed in Titus County, Texas was removed to this court on April 17, 2017. Docket No. 1. Other related complaints filed thereafter were consolidated by agreement of the parties (Docket No. 9), with the earliest removed action (5:17-cv-89) serving as the lead case. On June 1, 2017, Acuity, a Mutual Insurance Company, filed an Original Complaint in Interpleader pursuant to Fed. R. Civ. P. 22 and 28 U.S.C. 1335 seeking a determination by the Court as to the proper payment and distribution of insurance proceeds payable under a commercial auto policy issued by Acuity to Rooney Trucking, Inc. The Court held a scheduling conference on July 20, 2017, setting the case on an April 2018 trial schedule.

II. SPECIAL MASTER APPOINTMENT AND CLAIMS PROCEDURES

With respect to the interpleader action, the Court provided notice to the parties on October 13, 2017 that it had determined that the appointment of John Mercy, Esq. as a special master pursuant to Fed. R. Civ. P. 53 would serve the ends of justice by more efficiently facilitating the litigation process among the parties. Docket No. 95. No objections to the Court's notice were filed. The Court held a hearing on November 28, 2017 regarding appointment of Mr. Mercy (Docket No.

111), and later that day issued an Order Appointing Special Master (Docket No. 110). On November 30, Mr. Mercy issued a Claims Procedure Guidelines and Scheduling Order (Docket No. 113) governing consideration of claims submitted for review and recommendation by the Special Master, including a deadline of February 15, 2018 for providing a completed copy of a claim information sheet and associated supporting documents. The Special Master issued his Report and Recommendation on April 2, 2018 (Docket No. 155), and the parties were to accept, reject or object to the Special Master's recommendation within 21 days, or by April 24, 2018. Docket No. 110, p. 4.

III. ACCEPTANCES AND OBJECTIONS

Most parties accepted the Special Master's recommendations; only two objections were timely filed (See Docket Nos. 133-143, 147, 149-150; see also Docket Nos. 144, 146).

With respect to the objection filed by Lori Brinkley and Reginald Brinkley, Sr. on behalf of claimant R.B., the Court has reviewed the materials submitted. Docket No. 144. A claim information sheet, medical records and associated documents regarding R.B.'s claim were timely provided pursuant to the Special Master's Claims Procedure Guidelines and Scheduling Order. The Special Master, however, recommended that R.B. be awarded no portion of the insurance proceeds. Docket No. 132. Pursuant to the Order Appointing Special Master (Docket No. 110) and having reviewed the Brinkleys' submissions, the Court **MODIFIES** the Special Master's recommendation and **AWARDS** \$500 to R.B.

With respect to the objection filed by Tonya Turner on behalf of claimant D.T., the Court has reviewed the materials submitted. Docket No. 154. A claim information sheet, medical records and associated documents regarding D.T.'s claim were timely provided pursuant to the Special Master's claims procedure, and the Special Master recommended that D.T. be awarded

\$8,000.00. Pursuant to the order appointing the Special Master and having reviewed Turner's submissions, the Court **ADOPTS** the Special Master's recommendation and **AWARDS** D.T. \$8,000.00.

In addition to the two objections addressed above, untimely objections were filed by Plaintiffs Diondre Williams, Xzavion Neal, Ashton Brown, Kyron Saunders, Tyson Harper, Celeste Brown, Ian Williams and Craig Jackson on behalf of various minor claimants on July 6, 2018. These objections, filed more than two months late, stated that "Plaintiffs submitted the [c]laim [i]nformation [s]heet and supporting documents, but were still not considered by the Special Master in his Report and Recommendation." Docket No. 155, p. 2. On July 9, 2018, the Court ordered Plaintiffs to submit any evidence demonstrating that Plaintiffs timely submitted the claim information sheet and supporting documents by the February 15, 2018 deadline or timely objected to the Special Master's report and recommendation by the April 23, 2018 deadline. Plaintiffs' counsel was also ordered to explain why it waited until July 6, 2018 to notify the Court of its objection to the Special Master's report and recommendation. In response, Plaintiffs provided an affidavit explaining that a former legal assistant at Plaintiffs' counsel's firm "sent all claim sheets and documents to the Special Master via certified mail" but that "the green card was never located" and there is "no proof that the documents were sent by the February 15, 2018 deadline." Docket No. 158-1, p. 2. Plaintiffs' counsel's response also stated that Plaintiffs' objection was not timely filed. It bears noting that Plaintiffs' counsel has not provided the Court with any relevant claim information sheets, medical records or other associated documents concerning any of Plaintiffs' claims, either with its untimely objection on July 6, 2018 or with its response to the Court's July 9, 2018 order. In light of the above, Plaintiffs' Objection to the Report and Recommendation of the Special Master (Docket No. 155) is **OVERRULED**.

IV. RELEASES AND DISTRIBUTION OF PROCEEDS

As indicated above, also before the Court are the notices filed by Plaintiffs accepting the Special Master's recommendations. Docket Nos. 133-143, 147, 149-150. The Court previously ordered that the interpled insurance proceeds be deposited into the Court's registry (Docket No. 124).

Also pending before the Court is the Agreed Motion to Disburse Funds filed by Dane Ryan Stanage and Acuity. Pursuant to the Special Master's report and recommendation, Stanage is to be apportioned \$240,000.00 of the Acuity insurance funds. Stanage filed his Notice of Acceptance of the award on April 18, 2018, and the parties have conferred and agreed to a release of liability with Rooney Trucking. Accordingly, Stanage and Acuity's request for an order to disburse his portion of the Acuity insurance funds currently held in the Court's Registry in accordance with the Special Master's recommendations is GRANTED. The Clerk of the Court shall DISBURSE the amount of \$240,000.00 in a check payable to "Andrew Payne Client Trust for Dane Stanage," plus 24 percent of any accrued interest on the \$1,000,000.00 of deposited funds in the Court's registry.

With respect to the other claimants, once the parties have filed an appropriate motion indicating a settlement agreement has been reached as to each claimant, the Clerk of the Court shall DISBURSE the following amounts to the parties and claimants as indicated below, plus any accrued interest proportionate to the awards' percentage of the \$1,000,000.00 of deposited funds in the Court's registry:

Party	Claimant	Award	Percentage
Mt. Pleasant ISD Workers Compensation Carrier	David Bagley	\$10,000.00	1%
Shirley Beard	Shirley Beard	0	0%

Anterius Beard, Sr.	Anterius Beard, Sr.	\$125,000.00	12.5%
Anterius Beard, Sr. as Next Friend	TB	\$50,000.00	5%
Anterius Beard, Sr. as Next Friend	TB	\$50,000.00	5%
Mt. Pleasant ISD Workers Compensation Carrier	Angelica Beard	\$45,000.00 conditioned upon workers compensation carrier's agreement to waive all claims for credit against future payments to Anterious Beard, Terrelle Beard and Terrence Beard	4.5%
Carl Van Bowen	Carl Van Bowen and wife, Charla Bowen	\$320,000.00	32%
Lori Brinkley and Reginald Brinkley, Sr.	RB	\$500.00	0%
Fructuoso Martinez, as Next Friend	CC	\$1,000.00	0.1%
Tom and Leachia Craft as Power of Attorney	DC	\$13,500.00	1.35%
LeKesia and Elywin Evans as Power of Attorney	JE	\$11,000.00	1.1%
Deanna Williams as Next Friend	DG	\$5,000.00	0.5%
Devora Hernandez as Next Friend	IH	\$2,000.00	0.2%
Lisa Bassinger as Next Friend	HH	\$500.00	0.05%
George Lias as Next Friend	GL	\$2,000.00	0.2%
Alma Delia Atrizco-Alvarez as Next Friend	FM	\$15,000.00	1.5%

Evodia Macareno as Next Friend	JM	\$30,000.00	3.0%
Stephanie Scott as Next Friend	TM	\$1,000.00	0.1%
Angelica and Silverio Rios as Power of Attorney	AR	\$11,000.00	1.1%
Mt. Pleasant Workers Compensation Carrier	RS	0	0%
Dane Stanage	Dane Stanage	\$240,000.00	24%
Mt. Pleasant Workers Compensation Carrier	Dane Stanage	\$50,000.00 conditioned upon workers compensation carrier's agreement to waive all claims for additional amounts	5%
Tonya Turner as Next Friend	DT	\$8,000.00	0.8%
Reyna Rameriz	HV	\$5,000.00	0.5%
Joyce Wilson as Next Friend	AW	\$5,000.00	0.5%

The Court may issue further orders regarding any special drafting instructions as necessary or as are required by the Clerk of Court for distribution of the remaining funds.

V. PROVE-UP HEARING

On July 18, 2018, the Court appointed Carly S. Anderson as guardian ad litem with respect to the interests of the minor children T.B.#1 and T.B.#2 as their next friend, Anterius Beard, Sr. has an interest that is potentially adverse to theirs (Docket No. 159).


The Court SETS this case for a prove-up hearing with regard to the interests of the minor children T.B.#1 and T.B.#2 on November 28, 2018 at 2 p.m. in Texarkana, Texas. Any additional

documents the parties intend to rely upon or wish to have entered—including supplemental briefing or responses, proposed orders or a final judgment relating to the interests of the minor children T.B.#1 and T.B.#2 —shall be filed by November 20, 2018.

VI. MOTION FOR FEES

Also before the Court is the Special Master's Motion for Fees. Docket No. 152. Mr. Mercy was appointed as Special Master in this case on November 28, 2017. Pursuant to that appointment, Mr. Mercy has rendered professional services and assistance to the Court. The Court has examined the invoice previously provided to the Court and has determined that the Special Master's fees are reasonable and necessary. Accordingly, the Special Master's Motion for Fees is GRANTED and shall be TAXED against Rooney Trucking pursuant to Fed. R. Civ. P. 54(d).

So ORDERED and SIGNED this 9th day of October, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE